PHILLIPS PETROLEUM CO.

IBLA 72-385 Decided April 13, 1973

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers, NM-A 15581 (Okla.) and NM-A 15582 (Okla.).

Affirmed as modified.

Acquired Lands -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Words and Phrases

> Lands set apart as a military reservation from an Indian reservation pursuant to an executive order are not "acquired lands" within the meaning of the Mineral Leasing Act for Acquired Lands. The term "acquired lands" generally means lands in federal ownership which are not public lands, having been obtained by the Government by purchase, condemnation, or gift, or by exchange for such purchased, condemned, or donated lands or for timber on such lands.

APPEARANCES: C. L. Medford, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY MR. FISHMAN

The Phillips Petroleum Co. has appealed to this Board from decisions of the New Mexico State Office, Bureau of Land Management, dated April 5, 1972, which rejected offers for noncompetitive oil and gas leases NM-A 15581 (Okla.) and NM-A 15582 (Okla.). The offers were rejected for the reason that the lands described in the offers were withdrawn from all forms of disposal by an Order of the Secretary of the Interior on September 19, 1934. The decision of the State Office also states that the offers were filed on acquired land forms and that the records of the State Office do not show that the lands in issue have been acquired by the United States.

Appellant claims that the lands in issue were acquired by the United States pursuant to an Executive Order dated July 17, 1883. The Executive Order describes a tract of land located within the limits of the Cheyenne and Arapaho Indian Reservation which was set apart as a military reservation. The land described in the

Executive Order includes the lands described in appellant's lease offers. Appellant apparently reasons that the lands in issue are "acquired lands" because they were set aside as a military reservation under the Executive Order of July 17, 1883. We disagree.

The issue presented for resolution is whether the lands are subject to leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970). The threshold and determinative question is whether the lands are "acquired lands."

Acquired lands are lands in federal ownership which are not public lands, having been obtained by the Government by purchase, condemnation, or gift, or by exchange for such purchased, condemned, or donated lands, or for timber on such lands. Glossary of Public Land Terms, 1949. See El Mirador Hotel Company, 60 I.D. 299 (1949).

"Acquired lands" are those granted or sold to the United States by a State or a citizen. See Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 65 n. 2 (1966); McKenna v. Wallis, 200 F. Supp. 468, 470 n.7 (1961). Therefore, the lands in issue are not "acquired lands" since the lands were neither granted nor sold to the United States by a State or a citizen. The Executive Order of July 17, 1883, merely set the lands apart for use as a military reservation. See Leroy Gatlin, 4 IBLA 272 (1972). Thus, the Bureau properly rejected appellant's lease offers which were filed under the Mineral Leasing Act for Acquired Lands as the lands are not acquired lands within the meaning of that Act.

We, therefore, need not reach the question raised by the appellant that the Secretary's Order of September 19, 1934, 54 I.D. 559 did not withdraw the lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified.

Frederick Fishman, Member

We concur:

Martin Ritvo, Member

Joan B. Thompson, Member.